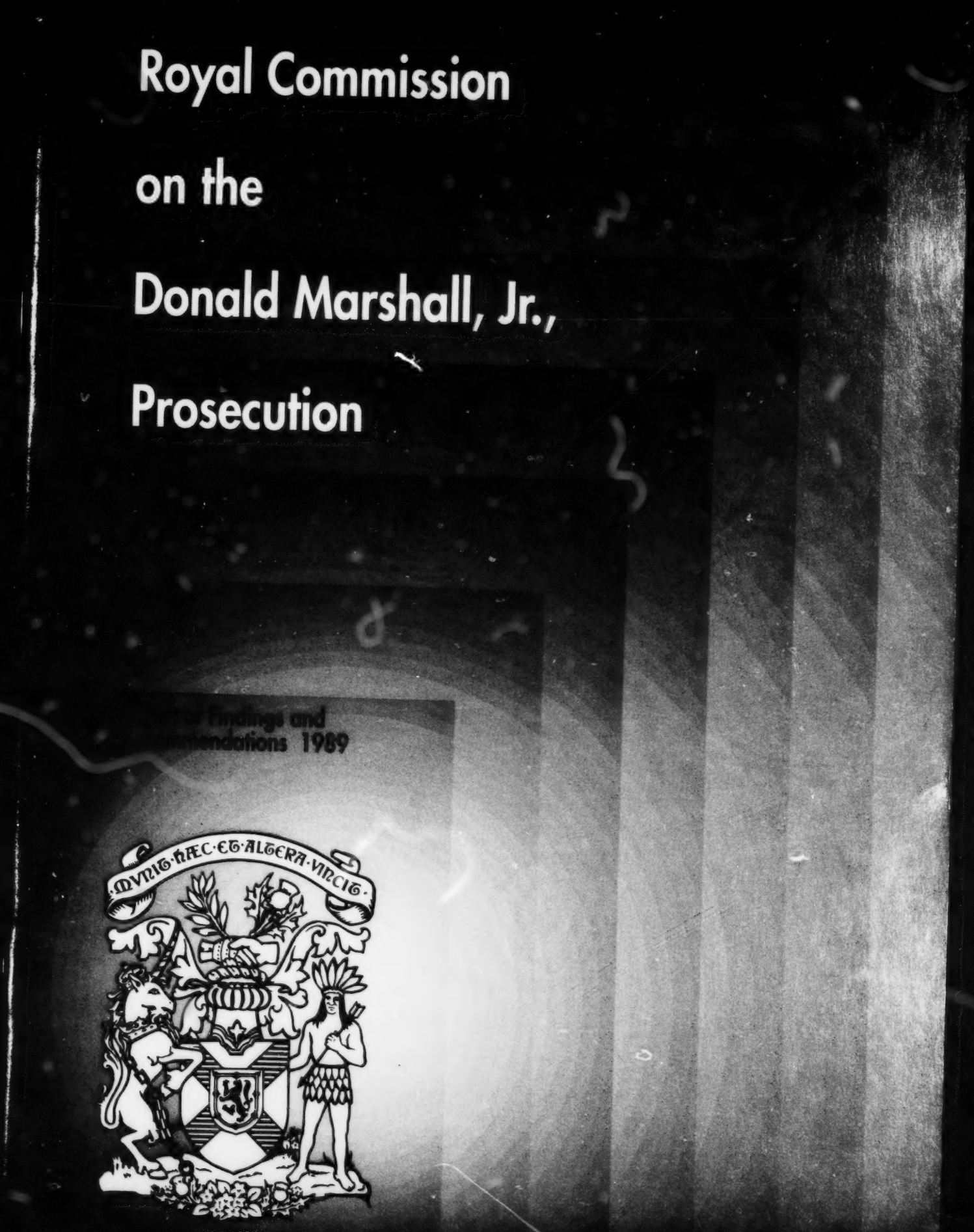
# Royal Commission on the Donald Marshall, Jr., Prosecution



# Royal Commission on the Donald Marshall, Jr., Prosecution

## Digest of Findings and Recommendations

Chief Justice T. Alexander Hickman
*Chairman*

Associate Chief Justice Lawrence A. Poitras
*Commissioner*

The Honourable Mr. Gregory T. Evans, Q.C.
*Commissioner*

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# Digest of Findings and Recommendations

The criminal justice system failed Donald Marshall, Jr. at virtually every turn from his arrest and wrongful conviction for murder in 1971 up to, and even beyond, his acquittal by the Court of Appeal in 1983. The tragedy of the failure is compounded by evidence that this miscarriage of justice could - and should - have been prevented, or at least corrected quickly, if those involved in the system had carried out their duties in a professional and/or competent manner. That they did not is due, in part at least, to the fact that Donald Marshall, Jr. is a Native.

These are the inescapable, and inescapably distressing, conclusions this Royal Commission has reached after sifting through 16,390 pages of transcript evidence given by 113 witnesses during 93 days of public hearings in Halifax and Sydney in 1987 and 1988; after examining 176 exhibits submitted in evidence during those hearings; after listening to two-and-one-half days of presentations by experts on the criminal justice system's treatment of Blacks and Natives and on the role of the office of Attorney General in that system; and after examining five volumes of research material prepared for the Royal Commission by leading academics and researchers.

The Royal Commission on the Donald Marshall, Jr., Prosecution was not established, however, just to determine whether one individual was the victim of a miscarriage of justice, or even to get to the bottom of how and why that miscarriage occurred. The Nova Scotia Government, which appointed this Royal Commission on October 28, 1986, also asked us to "make recommendations" to help prevent such tragedies from happening in the future.

As a result, our final Report contains not only findings of "fact" concerning the Marshall affair, but also specific recommendations dealing with everything from the role of police and Crown prosecutors in the criminal justice system, ways to ensure more equitable treatment of Blacks and Natives in the criminal justice system, and new mechanisms to deal with cases in which there are allegations of wrongful conviction.

There are two subjects, however, about which we are making no specific recommendations. These involve the issue of whether any criminal charges should be laid as a result of our findings, and the issue of whether Donald Marshall should receive additional compensation as a result of the Commission's conclusions about his wrongful conviction and imprisonment.

In the case of the former, it is our view that the function of a public inquiry is not to determine criminal responsibility, but to inform people about the facts of the matter under consideration. Decisions of Canadian courts confirm that this is the usually correct and appropriate position for a Royal Commission to adopt. We have also concluded that, because we accepted from the outset that the parties in the Marshall affair, both of whom were represented by solicitors during the negotiations, had agreed on a compensation

settlement, and since we heard no evidence about the adequacy of the amount agreed to, we are not now in a position to recommend that Marshall should receive additional compensation. However, as a result of our examination of the process by which the compensation was negotiated, we can say that since the process itself was so seriously flawed, Government should now re-examine the amount paid in light of our findings.

The purpose of this Digest is to provide an easily accessible summary of the Commissioners' findings and the thrust of the recommendations. The reader is urged to consult the Report itself for the underpinning of the findings and the full text of and rationale for the recommendations.

## Findings

Shortly before midnight on May 28, 1971, Donald Marshall, Jr., a 17-year-old Micmac, and Sandy Seale, a 17-year-old Black, met by chance and were walking through Wentworth Park in Sydney when they met two other men, Roy Ebsary, 59, a former ship's cook, and James (Jimmy) MacNeil, 25, an unemployed labourer.

Following a brief conversation, Marshall and/or Seale tried to "panhandle" Ebsary and MacNeil. That simple request - the kind most of us have encountered at one time or another - triggered a deadly over-reaction in the drunken and dangerous Ebsary. "This is for you, Black man", Ebsary said, and stabbed Seale in the stomach. He then lunged at Marshall, cutting him on the arm. Although Marshall's wound was superficial, Seale died less than a day later.

The Commissioners have found that Seale was not killed during the course of a robbery or attempted robbery. Seale, who came from a strict family and was expected home before his midnight curfew, had enough money to catch a bus home. We heard no evidence during our hearings to indicate that he had ever been involved in any criminal activity. Although Marshall had had a few brushes with the law, they were of a minor nature and did not involve theft. Roy Ebsary, on the other hand, had a reputation for violence and unpredictable behaviour, and had previously been convicted on a weapons charge involving a knife.

In our view, Seale and Marshall, who barely knew one another, would not have had the time or the inclination to plan a robbery in the few moments between their accidental meeting and the stabbing. According to the evidence we heard, they didn't even initiate the fateful conversation with MacNeil and Ebsary that ended in the stabbing.

The four Sydney police officers who initially responded to the report of the stabbing - Constables Leo Mroz, Howard Dean, Richard Walsh and Martin MacDonald - did not do a professional job. They did not cordon off the crime scene, search the area or question witnesses. In fact, none of the four officers dispatched to the scene even remained there to protect the area after Seale had been taken to

the hospital. We found their conduct entirely inadequate, incompetent and unprofessional.

The same can be said of the subsequent police investigation directed by then Sergeant of Detectives John MacIntyre. MacIntyre very quickly decided that Marshall had stabbed Seale in the course of an argument, even though there was no evidence to support such a conclusion. MacIntyre discounted Marshall's version of events partly because he considered Marshall a troublemaker and partly because, in our view, he shared what we believe was a general sense in Sydney's White community at the time that Indians were not "worth" as much as Whites.

Regardless of the reasons for his conclusions, MacIntyre's investigation seemed designed to seek out only evidence to support his theory about the killing and to discount all evidence that challenged it.

The most damning evidence against Marshall came from two teenaged "eyewitnesses", Maynard Chant, a 14-year-old who was on probation in connection with a minor criminal offence, and John Pratico, a mentally unstable 16-year-old whose psychiatrist later testified that he was known to fantasize and invent stories to make himself the centre of attention.

Shortly after Seale died, both youths gave statements to MacIntyre. Chant, although he had seen nothing, generally corroborated Marshall's version of events, while Pratico claimed to have seen two men running away from the stabbing scene. A few days later, however, they both gave contradictory second statements to MacIntyre. Pratico claimed he had seen Marshall stab Seale during an argument. Chant said he had also heard the argument and seen the stabbing. He placed a "dark-haired fellow" - presumably Pratico - in the bushes near where the stabbing took place.

None of this, as we now know, was true. The information in these second statements came from Pratico and Chant accepting suggestions John MacIntyre made to them. His attempt to build a case against Marshall that conformed to his theory about what had happened went far beyond the bounds of acceptable police behaviour. MacIntyre took Pratico, an impressionable, unstable teenager, to a murder scene, offered the youth his own version of events and then persuaded Pratico to accept that version as the basis for what became Pratico's detailed and incriminating statement. MacIntyre then pressured Chant, who was on probation and frightened about being sent to jail, into not only corroborating Pratico's statement, but also into putting Pratico at the scene of the crime. MacIntyre's oppressive tactics in questioning these and other juvenile witnesses were totally unacceptable.

Largely because of the untrue statements MacIntyre had obtained, Donald Marshall, Jr. was charged on June 4, 1971 with murdering Sandy Seale.

While the perjured evidence of Chant and Pratico did prove damning in court, we have concluded the Marshall's wrongful conviction resulted as well from the failure of others - including both the Crown prosecutor and Marshall's own defence counsel - to discharge their professional obligations. The Crown prosecutor, Donald C. MacNeil, should have interviewed the witnesses who had given contradictory statements. He did not. He should also have disclosed the contents of those earlier inconsistent statements to the defence. He did not.

Marshall's defence counsel, for their part, failed to provide an adequate standard of professional representation to their client - C. M. (Moe) Rosenblum and Simon Khattar, who had access to whatever financial resources they required, conducted no independent investigation, interviewed no Crown witnesses and failed to ask for disclosure of the Crown's case against their client. Even though, prior to the trial, they were aware that some witnesses had provided earlier statements, they made no effort to obtain them.

During the course of the trial, the trial judge, Mr. Justice Louis Dubinsky, made several errors in law. The most serious of those was his misinterpretation of the *Canada Evidence Act* which prevented a thorough examination of Pratico's dramatic recanting of his statement against Marshall outside the courtroom. The cumulative effect of all of this was that Donald Marshall, Jr. was convicted and sentenced to life in prison.

Just ten days after Marshall's conviction, however, Jimmy MacNeil came forward to tell police that he had seen Ebsary stab Seale. At the request of the Sydney City Police Department and the Department of Attorney General, the RCMP looked into MacNeil's allegations, but the officer in charge of that investigation, in his own words, "botched" it.

Inspector Alan Marshall did not demand to see the Sydney City Police Department's entire file on the Seale case, did not interview Ebsary, Marshall, Chant or Pratico, and did not even speak to Jimmy MacNeil, except briefly in connection with the taking of a polygraph test. Instead, he relied almost exclusively on the results of those polygraph tests, on what MacIntyre himself had told him about the case, and on his own innate faith in the workings of the criminal justice system. Based on an incompetent and incomplete investigation, Inspector Marshall filed a report that claimed to be "a thorough review of the case", and concluded that Marshall had stabbed Seale.

The fact that MacNeil had come forward with this new and potentially important information was not disclosed to Marshall's defence counsel nor to the Halifax Crown counsel assigned to handle Marshall's appeal of his conviction. As a result, this information was never presented to the Court of Appeal. If it had been, we believe it is all but inevitable that a new trial would have been ordered.

This, however, is not the only important issue that was not brought to the attention of the Court of Appeal. Neither Marshall's counsel nor Crown counsel raised the issue of the trial judge's erroneous rulings. And the Court of Appeal, which we believe had a duty to review the complete trial record to ensure that all relevant issues were argued, did not identify the significant errors. We believe that the trial judge's errors were so fundamental that the Court of Appeal would inevitably have ordered a new trial if it had been aware of those errors. Unfortunately, however, these issues were not raised by counsel or identified by the Court of Appeal and Marshall's appeal was denied.

Despite that, the case resurfaced on a number of occasions after the failure of the appeal. In 1974, for example, Roy Ebsary's daughter, Donna confided to a friend that she had seen her father washing what appeared to be blood from his knife on the night of the murder. When she and the friend went to the Sydney City Police Department with this information, however, they were told by one of the key officers in the original Marshall investigation, Detective William Urquhart, that the case was closed. We believe Urquhart had a duty to pass this information on to his superior officer who in turn would have had an obligation to pass it on to the Crown. The Crown, for its part, would have then had an obligation to provide it to Marshall's counsel, who could have pursued the matter further.

In the end, Marshall's innocence only became apparent as the result of an almost accidental series of coincidences. While in prison in 1981 Marshall learned that Ebsary had admitted killing Seale. On the basis of that information, Marshall's new lawyer, Stephen Aronson, following his own review of the matter, asked police in January 1982 to reopen the case.

Although the RCMP officers assigned to the reinvestigation, Staff Sergeant Harry Wheaton and Corporal James Carroll, were initially skeptical of Marshall's innocence, they did what Inspector Marshall had not done in 1971 - they conducted a painstaking, professional investigation. They not only interviewed all of the appropriate witnesses - including Maynard Chant, John Pratico, Roy Ebsary and Marshall himself - but they also gathered the physical evidence that indicated that Ebsary's knife had been used to stab Sandy Seale.

This is not to suggest that we believe everything about the 1982 investigation was handled well. We believe the RCMP officers should not have suggested to Marshall during their interview with him in Dorchester Penitentiary that Marshall had better tell them a story they could believe or they would leave and never return, or that they believed "there was something else going on in the park other than just a casual walk through the park to catch a bus".

That led Marshall who, it must be remembered, had spent 11 years in jail unsuccessfully protesting his innocence, to go along with what he already knew was Roy Ebsary's version of events - that the stabbing had occurred in the course of an attempted robbery.

Marshall's statement, which we believe would not have been regarded as voluntary and therefore would not have been admitted into evidence in court if Marshall were on trial, was used to devastating effect against him during the later Court of Appeal Reference hearing. We have also concluded that Harry Wheaton, like John MacIntyre, became blinded by his own assumptions during the course of his investigation. Wheaton believed Marshall had been victimized by MacIntyre, who he considered an "unscrupulous" police officer. As a result, Wheaton incorrectly accused MacIntyre of deliberately concealing evidence and erroneously suggested that the Department of Attorney General attempted to interfere in the RCMP investigation by restricting their efforts to interview key members of the Sydney City Police Department.

In fact, we believe the RCMP's own sensitivity to its relations with the Sydney City Police Department and the Department of Attorney General was at the heart of its failure to fully pursue the investigation of the Sydney City Police Department's role in the Marshall case.

Wheaton's credibility as a witness was further tarnished when, during his testimony, he made a number of unsolicited comments about matters that were unrelated to the work of this Commission and which cast unwarranted aspersions on the reputation of an individual.

Nonetheless, it is fair to say that the investigative work by Wheaton and Carroll did lead directly to Justice Minister Jean Chrétien's decision to refer the Marshall case to the Nova Scotia Court of Appeal for hearing and determination. While we believe that the Court of Appeal could have been an appropriate forum to examine why Marshall had been wrongfully convicted, we have also concluded that the decision to hold the Reference under what was then Section 617(b) [now Section 690(b)] of the *Criminal Code* instead of Section 617(c) [now Section 690(c)] precluded such a wide-ranging examination.

We find it regrettable that the federal Justice Minister was influenced in this decision by the views of the Chief Justice of Nova Scotia, Mr. Justice Ian MacKeigan, who expressed "real concern over whether [a reference under Section 617(b)] would work." As a result of this decision, Marshall was not only put in the position where he was required to prove his own innocence, but the issue placed before the Court was narrowed to the simple question of whether Marshall was guilty or innocent of the charges against him.

We have serious concerns with certain aspects of the Reference hearing and the decision itself.

Mr. Justice Leonard Pace, who was the Attorney General of Nova Scotia at the time of the original Marshall trial and appeal, should not have sat as a member of the panel hearing the Reference. (It is important to note that the Commission asked to question members of the Court of Appeal about this and other matters relating to the Reference hearing and decision, but they declined to testify before us

on the grounds of judicial immunity. The courts upheld their refusal to testify, and so our comments about the Reference are based only on the information available to us from the court records and Chief Justice MacKeigan's letter of transmittal to the Justice Minister.)

While the Court did quash Marshall's conviction and enter a verdict of acquittal, it also inexplicably chose to blame Marshall for his wrongful conviction. We have concluded that the Court's conclusion in this regard represented a serious and fundamental error. The Court used the evidence before it - as well as information that was never admitted into evidence - to "convict" Marshall of a robbery with which he was never charged, and concluded, in our view erroneously, that Marshall had "admittedly" committed perjury. The Court's further suggestion that Marshall's "untruthfulness ... contributed in large measure to his conviction" was not sustained by the evidence before the Court.

At the same time, the Court did not deal with either the significant lack of disclosure by the Crown prior to Marshall's original trial, or the reasons for the perjured "eyewitness" testimony, nor did it deal with the trial judge's error in limiting the cross-examination of Pratico.

We have concluded that the Court's decision amounted to a defence of the criminal justice system at the expense of Donald Marshall, Jr. in spite of overwhelming evidence that the system itself had failed.

The Court of Appeal's gratuitous comments about Marshall's responsibility for his own conviction and its conclusion that any miscarriage of justice was more apparent that real played a critically important role in Marshall's negotiations with the Department of Attorney General for compensation for his wrongful conviction. The Supreme Court of Canada commented on this influence in the course of its 1989 decision on judicial immunity. Within the Department of Attorney General, the Marshall case was not handled with the care and respect for fairness that it demanded.

Much of the blame for this must rest with Deputy Attorney General Gordon Coles. He failed to recognize the unique and tragic aspects of the Marshall case, and effectively prevented his Department from treating Marshall with the appropriate respect of fairness.

When Coles did take action in the Marshall case, those actions were often inappropriate. For example, he should not have engaged in unilateral correspondence with counsel to the Campbell Commission, the Royal Commission which the Province had appointed to determine appropriate compensation for Marshall. Also, he should not have urged Crown prosecutor Frank Edwards to take no position with regard to Marshall's guilt or innocence when Edwards appeared before the Court of Appeal Reference hearing.

Although Edwards must be commended for his refusal to back down from his position that he would urge the Court to acquit

Marshall, he too acted improperly in arguing that the criminal justice system was in no way responsible for Marshall's wrongful conviction at a time when he knew such a position was not supported by facts.

That argument, as we noted above, was adopted by the Court of Appeal and became an important factor in determining the amount of compensation paid Marshall. We believe that the Province's reliance on those comments - as well as the failure of senior officials within the Department of Attorney General to instruct their negotiator to treat the Marshall case as a unique situation rather than simply another civil dispute to be settled as cheaply as possible - made the compensation process itself flawed and unfair. We believe, as we stated earlier, that the Government should now reconsider the issue of compensation in light of the facts as we have found them.

Neither the Court of Appeal's decision nor the settlement of the compensation issue put to rest public concern about the Marshall case. Shortly after the Supreme Court of Canada turned down an appeal by Roy Ebsary - who had been convicted of manslaughter in 1985 after three trials - the Government of Nova Scotia appointed this Royal Commission in October 1986 to look into the matter and to make recommendations to the Governor in Council.

## Recommendations

Having dealt with the facts of the Marshall case from the time of the stabbing in Wentworth Park in 1971 up to our appointment more than 15 years later, we now turn our attention to an examination of the lessons to be learned from what happened to Donald Marshall, Jr.

In the process of investigating the specifics of his case, we were confronted with a number of more general but no less troubling questions. Was the original Sydney police investigation inadequate, incompetent and unprofessional because the police were inadequately trained? Because they were poorly managed? What should be the role of the Crown prosecutor, defence counsel, and officials in the Department of Attorney General in ensuring the "justness" of the criminal justice system? Should the Attorney General be responsible for both the provincial policing function and the administration of justice? Is the criminal justice system inherently biased against minorities and the poor? Should there be specific mechanisms in place to deal with allegations of wrongful conviction and imprisonment? We approached these issues from a number of different perspectives.

During our hearings, we examined the way in which the criminal justice system treated certain high profile individuals who were the subjects of criminal investigations. We compared their treatment with that accorded Donald Marshall, Jr. and used that examination as a basis to assess whether the system treats all citizens equally.

We also commissioned respected researchers to provide us with a broader perspective on such complex issues as minorities and the

law, and the respective roles of the police and Crown prosecutors within the criminal justice system. We also examined the office of the Attorney General, the chief law officer of the Crown.

To provide us with an even wider cross section of expertise and advice, we convened a special consultative forum to which we invited lawyers, academics, social workers, community activists and other experts from across Canada and the United States. During two-and-one-half days of discussions and workshops, these individuals offered helpful comments on the especially complex issues of racism and the Crown prosecutor's pivotal role in seeing that justice is done in an adversarial legal system.

Based on our analysis of all the information available to us, we developed recommendations found in Part 2 of Volume 1 of our Report.

These recommendations are grouped under a number of headings - Righting the Wrong: Dealing with the Wrongfully Convicted; Visible Minorities and the Criminal Justice System; Nova Scotia Micmac and the Criminal Justice System; Blacks and the Criminal Justice System; Administration of Criminal Justice; and Police and Policing.

## Righting the Wrong: Dealing with the Wrongfully Convicted

How should society deal with situations in which people are convicted and jailed for crimes they did not commit? How do we make sure we find out about such situations and, once we have learned about them, how do we determine a fair method to compensate those who have been the victims of such injustices?

We believe an independent review mechanism needs to be established to deal with allegations of wrongful conviction. Its existence must be well publicized so that both those who claim to have been wrongfully convicted and those who have knowledge about a wrongful conviction will know who to approach with their concerns. The review mechanism must be independent so that those with information will be willing to come forward. Finally, if it is to be effective, this body will need to have investigative powers to look into the allegations and obtain access to all relevant information and interview all witnesses.

We recommend that the Attorney General take up the matter of establishing a review mechanism with his Federal and Provincial counterparts.

If it is determined that someone has been wrongfully convicted and imprisoned, we recommend that a judicial inquiry be constituted to consider any claim for compensation. Such an inquiry would also have the power to look into the factors that led to the wrongful conviction. We do not believe there should be any pre-set limit on the amount of appropriate compensation, nor do we believe that the person wrongfully convicted should be required to pay his or her legal fees out of whatever compensation they receive. Such expenses should be regarded as part of the expenses of the inquiry.

## Visible Minorities and the Criminal Justice System

Having found that racism played a part in Donald Marshall, Jr.'s wrongful conviction and imprisonment, we believed it was important to ensure that our justice system will not - and cannot - be influenced by the colour of a person's skin.

While we recognize that many of the causes of discrimination are rooted in institutions and social structures outside the criminal justice system, we believe there are specific steps that can - and should - be taken to reduce discrimination in the justice system itself.

In order to make sure that visible minorities are better represented at all levels of the criminal justice system, we recommend that the Department of Attorney General and Solicitor General adopt and publicize a Policy on Race Relations - with goals and timetables for implementation - based on a commitment to employment equity and the elimination of inequalities based on race. We also recommend that a Cabinet Committee on Race Relations, including both the Attorney General and the Solicitor General, be established, and that it meet regularly with representatives of minority groups to obtain their input on criminal justice matters.

To ensure that more minority group members have the opportunity to participate in the justice system as Crown prosecutors, defence counsel and judges, we recommend that the Governments of Canada and Nova Scotia, as well as the Nova Scotia Bar, financially support Dalhousie Law School's new special minority admissions program for Micmacs and indigenous Blacks.

We also recommend that the Government appoint qualified visible minority judges and administrative board members wherever possible.

In order to ensure that those involved in the criminal justice system are aware of - and sensitive to - the concerns of visible minorities, we recommend that the Dalhousie Law School, the Nova Scotia Barristers Society and the Judicial Councils support courses and programs dealing with legal issues facing visible minorities. We also recommend that the Attorney General establish continuing education programs for Crown prosecutors that will familiarize them with the problem of systemic discrimination and suggest ways in which they can reduce its impact. Similarly, we recommend that training for police officers include discussion of minority issues and encourage sensitivity to minority concerns.

To assist visible minority group members themselves to better understand their rights, we recommend that the Public Legal Education Society work with Native and Black groups to develop and provide appropriate materials and services. This activity should be financially supported by Government.

In order that visible minority members, many of whom are also poor, are treated fairly by the criminal justice system, we recommend that the Government immediately proclaim the *Alternative Penalty Act* so that individuals will not have to go to jail simply because they are too poor to pay a fine. We also recommend that the Government,

in cooperation with Black and Native groups, formulate appropriate diversion programs specifically geared to Blacks and Natives.

Because of the lack of visible minority members now employed as guards or administrative staff in the corrections system, we urge the Government of Nova Scotia to press federal corrections officials to implement programs to recruit and hire more minority group members, as well as to implement programs and/or sensitize other employees to the particular needs of Black and Native offenders.

## Nova Scotia Micmac and the Criminal Justice System

Although we have dealt in the foregoing section with recommendations that would affect both Blacks and Natives, we recognize that, on a number of issues, Blacks and Natives regard the criminal justice system in different ways. There are historic, cultural and constitutional factors, for example, that have placed Natives in a special position in Canada. In the following two sections, we will address ourselves to recommendations relating more specifically to each of these groups.

In our view, Native Canadians have a right to a justice system that they respect and which has respect for them, and which dispenses justice in a manner consistent with and sensitive to their history, culture and language. To help achieve this, we recommend that a community controlled Native Criminal Court be established in Nova Scotia, initially as a five-year pilot project. This would involve, on one or more reserves, Native Justices of the Peace hearing summary conviction cases, the development of community diversion and mediation services and community work projects as alternatives to fines and imprisonment, the establishment of aftercare services and the provision of court worker services. Native communities would be entitled to choose to opt in or out of this pilot project model.

In order to facilitate this, as well as to deal with the questions of incorporating traditional Native customary law into the criminal and civil law as it applies to Native people and other important Native justice issues in Nova Scotia, we recommend that a Native Justice Institute be established with funding from the Federal and Provincial Governments. We also recommend that a tripartite forum involving Micmacs and federal and provincial governments be established to mediate and resolve outstanding issues between the Micmac and governments.

To improve the treatment of those Native accused who will continue to appear in our regular criminal courts, we recommend that Micmac interpreters be hired to work in all courts in the province; that the Provincial and Federal Governments, in consultation with Native communities, establish a Native court worker program in Nova Scotia; that the Chief Judge of the Provincial Court take steps to establish regular sittings of the Provincial Court on reserves; and that Judges seek the advice of Native Justice Committees composed of community leaders when sentencing Natives.

We also endorse a recommendation by counsel to the Attorney General that a study be done concerning proportional representation of visible minorities on juries.

To improve relations between Native accused and lawyers, we recommend that Nova Scotia Legal Aid be funded to enable it to assign sensitized lawyers to work specifically with Native clients and to hire a Native social worker/counsellor to act as a liaison between the Legal Aid service and Native people. At the same time, we recommend that the Nova Scotia Barristers Society develop a continuing liaison program with Native people and educate its members regarding the special needs of Native clients.

To enhance the policing function in Native communities, we recommend that the RCMP and municipal police forces, where applicable, take immediate steps to recruit and hire Native Constables.

## Blacks and the Criminal Justice System

The only legislation in Nova Scotia that specifically protects the rights of Blacks and other visible minorities is the Nova Scotia *Human Rights Act*. We believe it has not been as effective as it should be, so we recommend that the Act be amended to establish a Race Relations Division within the Commission, with at least one full time member who will be designated as Race Relations Commissioner.

We also recommend that the amended Act specifically state that those aspects of the criminal justice system that come under provincial jurisdiction are covered by the Act; that the Minister will (rather than may) appoint a Board of Inquiry if the Commission recommends it; and that the Commission be given the funds necessary to hire independent legal counsel rather than depending on the advice of the Department of Attorney General.

We also believe that in order to fulfill its education mandate, the Commission should be provided with the necessary funds to engage in an active public awareness program and that the Commission should produce an annual report of its activities.

In order to ensure that Blacks are more equitably treated in the courts, we recommend that the Province re-examine its funding of legal aid to ensure there are enough lawyers available to serve the needs of minority clients and, as well, that the Chief Justices and the Chief Judges of each court in the province exercise leadership to ensure fair treatment of minorities in the system.

## Administration of Criminal Justice

From the outset of our deliberations, we heard allegations that the criminal justice system in Nova Scotia dealt with people differently based on their race and social standing. In order to test those allegations, we decided it would be appropriate to look at how the justice system functioned in cases involving those who might be considered to have power and influence, and then compare their treatment with that given Donald Marshall, Jr.

It is important to point out that when we looked at investigations involving two members of the Nova Scotia Government - Roland Thornhill and Billy Joe MacLean - we did not consider the merits of the matters themselves, but simply how the justice system responded to them and what factors influenced the various decisions that were made.

Shortly after he became a member of the Government, Roland Thornhill reached an agreement with four Canadian chartered banks to settle his outstanding indebtedness to them by paying twenty-five cents for every dollar he owed. Section 110(1)(c) [now 121(1)(c)] of the *Criminal Code* says a government official or employee who receives a benefit without the consent in writing of his or her superior is guilty of an offence.

An initial RCMP "investigation" into whether Thornhill could be charged as a result of this agreement was abandoned in early 1980 after some preliminary inquiries. The officers apparently decided that they could not proceed because they did not know if Thornhill was a member of the Government at the time the offence was committed. The RCMP's apparent disinterest in pursuing an investigation against a prominent politician caused us concern.

When the RCMP did take up the case again in April 1980, the investigating officers quickly concluded that in their view, there was a prima facie case against Thornhill. After a preliminary report was forwarded to the Department of the Attorney General, Deputy Attorney General Gordon Coles instructed that a directive be issued forbidding the RCMP to have any contact with local prosecutors on the case until the investigation was completed and a report filed with the Attorney General. Despite Coles' claims to the contrary, this was a clear divergence from normal Department practice.

The RCMP filed a final report in September 1980 in which they recommended that at least one charge be laid, and in which they requested a Crown prosecutor be appointed to offer advice regarding existing and additional evidence, questions of law and court procedures.

However, Attorney General Harry How - without further consultation with the RCMP - announced on October 29, 1980 that there had been no criminal wrongdoing by Thornhill. Although this announcement was made by Attorney General How, he testified that he himself did not consider the merits of the case because of its sensitive nature, but simply relied upon and accepted the

recommendation of his Deputy, Gordon Coles.

Although Coles admitted he was not an expert in criminal law, he prepared a woefully inadequate and misleading legal opinion for the Attorney General - without consulting either his senior officials or the RCMP - that claimed there was no basis for the charge against Thornhill.

While we accept that How genuinely and properly wished to distance himself from the decision in the Thornhill matter, we believe once the matter was brought to his attention he had a duty to satisfy himself that normal reviews and procedures had been followed, as well as to determine what the RCMP had recommended.

Although the RCMP did consider laying charges on its own - as was its right and responsibility - Coles pointedly suggested to RCMP officials that such a course of action might jeopardize working relationships between the Province and the RCMP. Eventually the RCMP agreed not to lay charges "in contradiction to the wishes of the Attorney General."

We found that this matter was not handled in the "normal" way, either by the Department or the RCMP. We believe this was because of Thornhill's high profile within Government. The RCMP failed in its obligation to be independent and impartial. The Department of Attorney General failed to follow normal procedures.

Thornhill was not aware of the steps that were taken which constituted a preferred handling of his case. However, the result was that Thornhill - although he neither requested nor encouraged it - appeared to have received preferential treatment.

In the other case we examined, Billy Joe MacLean was charged and convicted of four charges of uttering forged documents in connection with expense claims he submitted as a member of the Legislative Assembly and as a provincial Cabinet Minister.

The case began in 1983 when the provincial Auditor General asked the RCMP for advice on MacLean's expense claims, some of which appeared to be fraudulent. According to a letter from the Auditor General to the Deputy Attorney General, the RCMP determined that "there is justification to take the matter further."

Deputy Attorney General Coles again assumed direct charge of the Department's response, and in a way that seemed designed to protect MacLean from investigation rather than to determine whether there was substance to the allegations.

Coles and the Director (Criminal) Gordon Gale provided inadequate analysis and advice to the Attorney General, dismissing the allegations against MacLean as "accounting irregularities", and arguing that no further investigation or prosecution was warranted.

Once again, the Attorney General of the day, Ron Giffin, properly followed a hands-off policy because of the politically sensitive nature of the issue. He testified that he simply followed the advice of his Deputy when he wrote to the Speaker of the House dismissing the matter. Once his involvement was requested, we believe Giffin had

an obligation to at least find out whether the RCMP had conducted a proper investigation of the matter. Later, Giffin did become directly involved - when he shouldn't have - in discussions of the specifics of plea and sentence negotiations in the MacLean case.

Although the RCMP had concluded that the matter should be investigated further, it once again did nothing on its own until April 1985 when the Liberal Leader, Vince MacLean, directly requested them to investigate. We believe the RCMP's reluctance to proceed with politically sensitive criminal investigations without clear authorization from the Department of Attorney General is not only a dereliction of duty, but also indicates a failure to adhere to the principle of police independence.

Once again - although MacLean did not ask for any special treatment from either the RCMP or the Attorney General - the justice system's response indicated an undue and improper sensitivity to the status of the person being investigated. The conduct of officials in both the RCMP and the Department of Attorney General exemplified the attitude that status is important and that one is not blind to influence in enforcing the law. Such an attitude makes the ideal of justice for all meaningless, and renders the goal of complete public confidence in the system of administration of justice impossible.

Having concluded that special treatment was accorded in both of these investigations, we turned our attention to a consideration of what proposals we could make to improve the fairness - and the public's faith in the fairness - of the administration of justice in Nova Scotia.

As an important first step, we are recommending that a statutory office of Director of Public Prosecutions be established. He or she should have at least 10 years experience and would be appointed for a 10-year term by the Governor in Council, after consultation with the Nova Scotia Barristers Society and the two Chief Justices of the Supreme Court. The Director of Public Prosecutions would have the status of a Deputy Department head and would exercise all the functions of the Attorney General in relation to the administration of criminal justice, filing an annual report with the Attorney General.

To ensure equitable treatment before the courts, we recommend that the Attorney General - after consultation with the Director of Public Prosecutions - issue and then table in the legislature guidelines for the exercise of prosecutorial discretion.

Although the Attorney General would still be able to intervene in a prosecution, he or she would have to issue written instructions to that effect, which instructions would then be published at the appropriate time in the Royal Gazette.

To reinforce the police's unfettered right to lay charges, we recommend that the Solicitor General issue general instructions to the police informing them of their ultimate right and duty to determine the form and content of charges to be laid in a particular case, subject to the Crown's right to withdraw or stay charges

after they have been laid.

Based on our findings concerning the lack of disclosure in the Marshall case, we recommend that the Attorney General urge the Federal Government to amend the *Criminal Code* to provide for full and timely disclosure of the evidence in possession of the Crown, including information that might mitigate or negate guilt. Judges would be required not to proceed with a case until they are satisfied such disclosure has taken place. Until such amendments are passed, we recommend that the Attorney General adopt and enforce similar provisions as policy.

To assist Crown prosecutors in the exercise of their duties, and in order to create an effective middle level of management in Nova Scotia's prosecution service, we recommend that a system of chief prosecuting officers for each region be adopted. We also recommend that policy directives on plea discussions and agreements be revised to establish a clear basis for the exercise of prosecutorial discretion in such discussions and agreements.

At the judicial level, we recommend the abolition of the policy of providing summaries and preliminary hearing transcripts to judges, on the grounds that this material may be prejudicial to the accused.

## Police and Policing

In addition to the suggestions we have already made regarding policing, we believe that much still needs to be done to improve the level of professionalism among municipal police departments in Nova Scotia.

On a broad policy level, we recommend that the Solicitor General and the Minister of Municipal Affairs establish a joint task force to examine the organization and delivery of policing services in Nova Scotia, giving special consideration to the question of whether - and if so, to what degree - to regionalize existing municipal policing services.

To reflect the newly created Department of Solicitor General's increasing role in policing in the province, we recommend that the Solicitor General establish an Executive Director (Policing) within the Department.

To enhance its role of providing leadership and direction to municipal police forces in the province, we recommend that the Government give the Nova Scotia Police Commission sufficient authority to maintain its independence from the new Solicitor General's Department, while giving it the resources to properly enable it to fulfill its important roles in providing municipal policing leadership, training, information and assessment.

Part of the Police Commission's leadership role should involve developing initiatives aimed at improving relations between police and visible minority communities. To ensure that individual departments meet the necessary policing standards, we believe the Commission should - with appropriate input from both provincial

and municipal authorities - establish minimum policing standards, and then regularly assess the operations of each municipal police department to make sure that it meets those standards.

To ensure the independence of the recently established Police Review Board, which was set up to improve handling of citizen complaints about the police, we recommend that the Chair of the Police Commission not act as Registrar of the Board.

To reduce the possibilities of political interference in policing, we also recommend amendments to the *Police Act* to make it unlawful for anyone other than a police officer of the same force to issue any policing directive to an officer.

To improve relations between police forces and minorities, we recommend that both municipal police forces and the RCMP should begin to actively recruit visible minority group members, establishing specific employment targets that reflect their numbers in the general population. These police forces should also take positive action to make sure members of such groups have the opportunity to be promoted to police management positions.

We recommend that municipal police departments develop official policies on racial stereotyping, and that police training institutions and police forces place greater emphasis on multicultural education and sensitivity training at both the recruit and continuing training levels.

To improve the level of professionalism in municipal police forces, we recommend that more sophisticated training be provided for those promoted to supervisory and management positions and that uniform guidelines for promotion be developed. In all but the largest police departments, we recommend that the Police Commission and/or outside consultants be actively involved in the selection of a new chief of police.

To improve the investigative and policing capabilities of individual officers, we recommend that common standards for a variety of policing duties be developed and that all municipal police officers be assessed regularly to ensure that they meet those standards. All constables, for example, should have basic investigative skills that would enable them to secure a crime scene and carry out preliminary investigative work. Guidelines should also be developed regarding the use of part time and auxiliary personnel.

To protect the rights of witnesses and/or suspects, we recommend that special precautions be taken when questioning juveniles or unstable individuals, and that interviews be videotaped, if possible, when questioning juveniles and others who may be easily influenced, or when interviewing chief suspects in serious criminal cases. During investigations of such serious offences, we recommend that it become standard practice for supervisors to review with the investigating officers the progress of their investigations.

In cases where reinvestigation of the work of a police department is required, we recommend that the Solicitor General and the

Attorney General develop guidelines detailing the procedures to be followed. Any such reinvestigation of a municipal police force should be conducted by the RCMP with out-of-province assistance if necessary. All reinvestigations should be thoroughly reviewed by the Department of Attorney General.

## Conclusion

Our purpose as Commissioners has been to review and assess the system of administration of criminal justice in Nova Scotia in the context of the wrongful conviction of Donald Marshall, Jr.

Based on our review and assessment we have found that there were, and are, serious shortcomings in that system which must be addressed. Our recommendations are intended to remedy those shortcomings and to promote a system of administration of justice which responds appropriately and fairly in all cases.

While it is impossible to guarantee that there will never be another miscarriage of justice such as befell Donald Marshall, Jr., it is imperative that those in authority act responsibly to reduce or eliminate such a possibility. It is to that end that we submit this Report.

# Summary of Findings

## 1.1 Introduction

*We find:*

- that the criminal justice system failed Donald Marshall, Jr. at virtually every turn from his arrest and conviction in 1971 up to - and even beyond - his acquittal by the Supreme Court of Nova Scotia (Appeal Division) in 1983.

- that this miscarriage of justice could have and should have been prevented if persons involved in the criminal justice system had carried out their duties in a professional and/or competent manner.

- that Marshall was not the author of his own misfortune.

- that the miscarriage of justice was real and not simply apparent.

- that the fact that Marshall was a Native was a factor in his wrongful conviction and imprisonment.

## 1.2 The Incident

*We find:*

- that Sandy Seale was not killed in the course of a robbery, attempted robbery, mugging or rolling.

- that Donald Marshall, Jr. told the truth about the events surrounding the stabbing when first interviewed by the Sydney City Police on the night of the incident.

- that Seale and Marshall met by chance following the dance.

- that Ebsary and MacNeil initiated the contact with Marshall and Seale.

- that Ebsary, MacNeil, Marshall and Seale engaged in a conversation that lasted for several minutes.

- that the stabbing was the result of Ebsary's violent and unpredictable character.

## 1.3 The Police Response

*We find:*

- that the immediate police response to the stabbing was entirely inadequate, incompetent and unprofessional.

- that the subsequent MacIntyre investigation was inadequate, incompetent and unprofessional.

- that MacIntyre, without any evidence to support his conclusions and in the face of evidence to the contrary, had identified Marshall as the prime suspect by the morning of May 29, 1971 and concluded that the incident occurred as the result of an argument.

- that the fact that Marshall was a Native was one of the reasons MacIntyre identified him as the prime suspect.

- that MacIntyre accepted evidence that supported his conclusion and rejected evidence that discounted that conclusion.

- that MacIntyre should not have ignored the statements given by George and Sandy MacNeil, which described two men fitting the descriptions given by Marshall in the park at the time of the incident.

- that MacIntyre failed to pursue efforts to locate the two men Marshall had described as being involved in Seale's killing.

- that the Sydney City Police Department should have taken advantage of the investigative facilities and services available from the RCMP.

- that an autopsy should have been performed on Sandy Seale.

- that the information in John Pratico's statement of June 4, 1971 resulted from suggestions MacIntyre made to Pratico.

- that MacIntyre's interview with Maynard Chant was conducted in an intimidating and unacceptable manner.

- that the information in Chant's statement of June 4, 1971 concerning a dark-haired fellow in the bushes, an argument, and Marshall stabbing Seale, resulted from suggestions MacIntyre made to Chant.

- that Urquhart did not crumple up and throw away Patricia Harriss' partially completed statements.

- that Harriss used information given to her by someone else in providing the first story she told police.

- that Urquhart, although a secondary player in the MacIntyre investigation, had a responsibility to speak out when the investigation was being conducted improperly.

- that Robert Patterson was found by Sydney City Police and questioned but no statement was taken.

## 1.4 Trial Process

*We find:*

- that the Crown prosecutor and the defence counsel in Donald Marshall, Jr.'s 1971 trial failed to discharge their obligations, resulting in Marshall's wrongful conviction.

- that the Crown prosecutor, in view of the conflicting statements before him, should have interviewed all of the key witnesses separately prior to trial.

- that the Crown prosecutor should have disclosed the contents of prior inconsistent statements to the defence.

- that defence counsel failed to provide adequate professional representation in that they did not arrange for any independent investigation, interview Crown witnesses or seek disclosure of the Crown case.

- that defence counsel were aware of the existence of prior statements by Chant, Pratico and Harriss but did not request them.

- that the trial judge misinterpreted the *Canada Evidence Act* in refusing to permit a thorough examination of Pratico's comments outside the courtroom.

- that the cumulative effect of incorrect rulings by the trial judge denied Marshall a fair trial.

## 1.5 1971 RCMP Review

*We find:*

- that the Crown prosecutor in Sydney, Donald MacNeil, and the Attorney General's office in Halifax failed to discharge their duties because they did not disclose the existence of important new evidence to counsel for Marshall in November 1971.

- that Robert Anderson, the Director (Criminal) in the Department of Attorney General should have instructed his Crown prosecutors to bring the evidence to the attention of Marshall's counsel.

- that the RCMP review failed to uncover Donald Marshall, Jr.'s wrongful conviction because of Inspector E. A. Marshall's incompetent investigation into Jimmy MacNeil's allegations.

## 1.6
Appeal Process

*We find:*

- that counsel for Donald Marshall, Jr. failed to put arguments before the Court of Appeal concerning fundamental errors of law during the trial, and that this failure represented a serious breach of the standard of professional conduct expected and required of defence counsel.

- that the Crown's case should not have been handled by a junior lawyer in the Department.

- that Crown counsel should have raised the issue of the trial judge's erroneous rulings when defence counsel failed to do so.

- that there should have been greater cooperation between local Crown prosecutors in Sydney and the lawyers handling the appeal in the Department of Attorney General in Halifax.

- that the Court of Appeal had a duty to review the complete trial record and ensure that all relevant issues were argued.

- that the errors by the trial judge were so fundamental that a new trial should have been the inevitable result of any appeal.

## 1.7
The 1974 and 1975 Reviews

*We find:*

- that Constable Gary Green acted properly in providing information regarding Donna Ebsary's evidence to the Sydney City Police Department, and that he cannot be faulted for failing to investigate the matter further.

- that Urquhart was remiss in his duties when he failed to follow up on new evidence indicating that Donna Ebsary had seen her father with a blood-stained knife on the night of Seale's murder.

- that the RCMP did conduct a file review of the Marshall case in 1975 and that while little is known about its purpose or results, it is clear that the Sydney City Police Department cooperated with the RCMP in the 1975 review.

## 1.8
The 1982 Reinvestigation

*We find:*

- that Staff Sergeant Wheaton and Corporal Carroll should have been more circumspect in questioning Marshall in Dorchester about what happened on the night of the murder.

- that Chief MacIntyre did not deliberately attempt to hide any

documents from the RCMP investigators.

- that the Department of Attorney General did not interfere with the RCMP investigation.

## 1.10
### Setting up the Reference

*We find:*

- that it is regrettable that the Attorney General of Canada was influenced by Chief Justice MacKeigan's views in his decision to hold the Reference under Section 617(b) [now Section 690(b)] of the *Criminal Code* rather than Section 617(c) [now Section 690(c)].

- that the decision to proceed under Section 617(b) precluded a complete examination of why the wrongful conviction occurred.

## 1.11
### Reference Decision

*We find:*

- that the Court of Appeal made a serious and fundamental error when it concluded that Donald Marshall, Jr. was to blame for his wrongful conviction.

- that the Court selectively used the evidence before it - as well as information that had not been admitted in evidence - in order to reach its conclusions.

- that the Court took it upon itself to "convict" Marshall of a robbery with which he was never charged.

- that the Court was in error when it stated that Marshall "admittedly" committed perjury.

- that the Court did not deal with the significant failure of the Crown to disclose evidence, including the conflicting statements by witnesses, to defence counsel.

- that the Court's suggestion that Marshall's "untruthfulness ... contributed in large measure to his conviction" was not supported by any available evidence and was contrary to evidence before the Court.

- that the Court did not deal with the errors by the trial judge in limiting the cross-examination of Pratico.

- that Mr. Justice Leonard Pace should not have sat as a member of the panel hearing the Reference.

- that the Court's decision amounted to a defence of the criminal

justice system at Marshall's expense, notwithstanding overwhelming evidence to the contrary.

- that the Court's gratuitous comments in the last pages of its decision created serious difficulties for Donald Marshall, Jr., both in terms of his ability to negotiate compensation for his wrongful conviction and also in terms of public acceptance of his acquittal.

## 1.12
## Donald Marshall, Jr. and the Attorney General's Department

*We find:*

- that Donald Marshall, Jr. was not treated properly by the Attorney General's Department.

- that Gordon Coles should not have attempted to persuade Frank Edwards not to urge the Court of Appeal to acquit Marshall.

- that Edwards is to be commended for refusing to back down in his position in favour of arguing for the Court to acquit Marshall.

- that Edwards acted improperly in arguing before the Court of Appeal that the criminal justice system was not in any way responsible for Marshall's wrongful conviction, a position he knew was not supported by the facts.

- that Coles failed to do any research before advising the Attorney General not to appoint a public inquiry into the Marshall case.

- that Coles' failure to take any positive action to determine why Marshall had been wrongfully convicted is inexcusable.

- that Coles and Martin Herschorn failed to review any of the relevant documents before refusing a *Freedom of Information Act* request for them from Marshall's counsel.

- that Coles' unilateral correspondence with counsel to the Campbell Commission was improper.

- that Coles should have considered whether it was appropriate for the Province to approach the compensation process in the Marshall case simply with an eye to achieving the best possible financial deal for the Province.

- that the Court of Appeal's gratuitous references to Marshall's responsibility for his own conviction were a factor in determining the amount of compensation paid to him.

- that the compensation paid to Donald Marshall, Jr. was only for the period of time Marshall spent in jail.

## Summary of Recommendations

### Righting the Wrong: Dealing with the Wrongfully Convicted

| | |
|---|---|
| **1.** Review body | We recommend that the provincial Attorney General commence discussions with the federal Minister of Justice and the other provincial Attorneys General with a view to constituting an independent review mechanism - an individual or a body - to facilitate the reinvestigation of alleged cases of wrongful conviction. |
| **2.** Powers of review body | We recommend that this review body have investigative power so it may have complete and full access to any and all documents and material required in any particular case, and that it have coercive power so witnesses can be compelled to provide information. |
| **3.** Judicial Inquiry to consider compensation claims | We recommend that when a person is found to have been wrongfully convicted, a judicial inquiry be constituted to consider any claim for compensation. The person or persons appointed to this inquiry should be completely independent of any involvement with the administration of justice in the province which gave rise to the wrongful conviction. |
| **4.** No limit on compensation amount | We recommend that there be no pre-set limit on the amounts recoverable with respect to any particular claim or any particular aspect of a claim. |
| **5.** Factors to be considered | We recommend that any judicial inquiry be entitled to consider any and all factors which may have given rise to the wrongful conviction, imprisonment or the continuation of that imprisonment. |
| **6.** Legal fees and disbursements | We recommend that appropriate legal fees and disbursements incurred by or on behalf of the wrongfully convicted person be paid as part of the inquiry's expenses. |
| **7.** Report to be public | We recommend that the inquiry report become a public document. |

**8.**
Marshall compensation

We recommend that Government recanvass the adequacy of the compensation paid to Marshall in light of what we have found to be factors contributing to his wrongful conviction and continued incarceration.

## Visible Minorities in the Criminal Justice System

**9.**
Policy on Race Relations

We recommend that the Departments of the Attorney General and Solicitor General adopt and publicize a Policy on Race Relations that has as its basis a commitment to employment equity and the elimination of inequalities, based on race, in these Departments and their agencies and the reduction of racial tensions between these Departments and the communities with which they interact.

**10.**
Cabinet Committee on Race Relations

We recommend that a Cabinet Committee on Race Relations be established which would include the Attorney General and Solicitor General. This Committee should meet regularly with representatives of visible minority groups in order to assure the input of these groups in matters of criminal justice.

**11.**
Dalhousie Law School's minority admissions program

We recommend that the Dalhousie Law School's minority admissions program for Micmacs and indigenous Blacks receive the financial support of the Governments of Canada and Nova Scotia, and the Nova Scotia Bar.

**12.**
Appointment of judges and board members

We recommend that Governments consider the needs of visible minorities by appointing qualified visible minority judges and administrative board members whenever possible.

**13.**
Programs for law students, lawyers, judges

We recommend that the Dalhousie Law School, the Nova Scotia Barristers Society and the Judicial Councils support courses and programs dealing with legal issues facing visible minorities, and encourage sensitivity to minority concerns for law students, lawyers and judges.

**14.**
Programs for Crown prosecutors

We recommend that the Attorney General establish continuing professional education programs for Crown prosecutors, which would include:
**(a)** an exposure to materials explaining the nature of systemic discrimination toward Black and Native peoples in Nova Scotia in the criminal justice system; and
**(b)** an exploration of means by which Crown prosecutors can carry out their functions so as to reduce the effects of systemic discrimination in the Nova Scotia criminal justice system.

**15.**
Police training

We recommend that training for all police officers, both at the intake level and as continuing education, include content on police/minority concerns and sensitivity to visible minority issues.

**16.**
Public Legal Education programs and funding

We recommend that the Public Legal Education Society consult and work with Native and Black groups to develop and provide legal materials and services for minority users. These initiatives cannot be undertaken without specific funding. This should be provided where necessary by Government.

**17.**
Alternative Penalty Act

We recommend that the Government immediately proclaim the *Alternative Penalty Act*, S.N.S. 1989, c.2, and that regulations which address the particular needs of Native and Black offenders be enacted.

**18.**
Diversion programs

We recommend that the Province, in close cooperation with the Native and Black communities, formulate proposals for the establishment of appropriate diversion programs for Natives and Blacks, and that the Province actively recommend such programs to the Federal Government with proposals for any necessary amendments to the *Criminal Code*.

**19.**
Correctional programs

We recommend that the Department of the Solicitor General of Nova Scotia take steps to, and urge the federal correctional authorities to take steps to:

**(a)** immediately implement programs to recruit and hire more Natives and Blacks in professional and non-professional positions in the correctional service;

**(b)** implement ongoing education and training programs designed to sensitize correctional workers at all levels to the particular needs of Native and Black offenders based on their racial and cultural background;

**(c)** indicate to all correctional workers that discriminatory conduct (including racial slurs) against Natives and Blacks will not be tolerated and may result in adverse employment consequences;

**(d)** offer institutional programs emphasizing the educational, cultural and religious needs of Native and Black offenders in institutions where a significant number of Natives and Blacks are incarcerated; and

**(e)** support rehabilitation programs for Native and Black inmates and former inmates which take into account their background and needs.

## Nova Scotia Micmac and the Criminal Justice System

**20.**
Native Criminal Court

We recommend that a community-controlled Native Criminal Court be established in Nova Scotia, initially as a five-year pilot project, incorporating the following elements:
**(a)** a Native Justice of the Peace appointed under Section 107 of the *Indian Act* with jurisdiction to hear cases involving summary conviction offences committed on a reserve;
**(b)** diversion and mediation services to encourage resolution of disputes without resort to the criminal courts;
**(c)** community work projects on the reserve to provide alternatives to fines and imprisonment;
**(d)** aftercare services on the reserve;
**(e)** community input in sentencing, where appropriate; and
**(f)** court worker services.

**21.**
Native Justice Institute

We recommend that a Native Justice Institute be established with Provincial and Federal Government funding to do, among other things, the following:
**(a)** channel and coordinate community needs and concerns into the Native Criminal Court;
**(b)** undertake research on Native customary law to determine the extent to which it should be incorporated into the criminal and civil law as it applies to Native people;
**(c)** train court workers and other personnel employed by the Native Criminal Court and the regular courts;
**(d)** consult with Government on Native justice issues;
**(e)** work with the Nova Scotia Barristers Society, the Public Legal Education Society and other groups concerned with the legal information needs of Native people; and
**(f)** monitor the existence of discriminatory treatment against Native people in the criminal justice system.

**22.**
Tripartite forum on Native issues

We recommend that a tripartite forum (Micmac/ Provincial/Federal Government) similar to the Ontario Indian Commission be established to mediate and resolve outstanding issues between the Micmac and Government, including Native justice issues.

**23.**
Micmac interpreters

We recommend that all courts in Nova Scotia have the services of an on-call Micmac interpreter for use at the request of Micmac witnesses or accused.

**24.**
Native court workers

We recommend that the Provincial and Federal Governments, in consultation with Native communities, work together to establish a Native court worker program, as an immediate first step in making the criminal justice system more accessible to Native people.

**25.**
Sittings of Provincial Courts on reserves

We recommend that the Chief Judge of the Provincial Court take steps to establish regular sittings of the Provincial Courts on Nova Scotia reserves.

**26.**
Legal Aid funding

We recommend that Nova Scotia Legal Aid be funded to permit them to:
**(a)** specifically assign lawyers to work with Native clients to develop a specialization with respect to the concerns of Native people; and
**(b)** hire a Native social worker/counsellor to, among other things, act as a liaison between Native people and the Legal Aid service.

**27.**
Liaison with bar

We recommend that a program of ongoing liaison between the bar - prosecutors, private defence and legal aid - and Native people, both on and off reserve, be established through the Nova Scotia Barristers Society. The Society must also educate its members concerning the special needs of Native clients.

**28.**
Native constables

We recommend that the RCMP and municipal police forces, where applicable, take immediate steps to recruit and hire Native constables.

**29.**
Native Justice Committee

We recommend that the advice of leaders chosen by the Native community and sitting as a Native Justice Committee be sought by judges in sentencing Natives, where possible.

**30.**
Probation and aftercare

We recommend that the Provincial and Federal Governments facilitate and finance mechanisms by which Native people can have more control over the treatment of Natives convicted of an offence, such as establishing a probation officer capability and community-based aftercare services on-reserve.

## Blacks in the Criminal Justice System

**31.**
Amendments to *Human Rights Act*

We recommend that the Nova Scotia *Human Rights Act* be amended:
**(a)** to require that an annual report of the Commission's activities be submitted to the Minister who shall place the report before the Legislative Assembly;
**(b)** to specifically state that those parts of the justice system under provincial jurisdiction are included in the Act's coverage;
**(c)** to provide that where the Commission is unable to settle a complaint, and where the Commission recommends the appointment of a Board, it shall report to the Minister who shall appoint a Board of Inquiry (Section 25 now gives the Minister a discretion as to whether a Board should be appointed); and
**(d)** to establish within the Commission a Race Relations Division reporting to the Commission through one or more members, at least one of whom shall be full time and designated as Race Relations Commissioner.

**32.**
Funding for Human Rights Commission

We recommend that the Human Rights Commission be provided with sufficient resources to enable it to effectively carry out its present mandate and further responsibilities added by our recommendations, and in particular to enable it:
**(a)** to retain independent legal counsel; and
**(b)** to engage in an active public awareness program, particularly in the area of Native and Black concerns.

**33.**
Responsibility of Chief Judges

We recommend that the Chief Justices and the Chief Judges of each court in Nova Scotia exercise leadership within his or her area of responsibility to ensure fair treatment of visible minorities in the criminal justice system.

**34.**
Legal Aid funding for Black clients

We recommend that, because of the dependence of Black clients on legal aid services, the funding of legal aid in Nova Scotia be re-examined to ensure that there are sufficient counsel to properly serve minority clients and to engage in proactive programs in minority communities.

## Administration of Criminal Justice

**35.**
Director of Public Prosecutions

We recommend that:
**(a)** there be created by statute the office of Director of Public Prosecutions, and that the holder of this office:
**(i)** be a member of the bar of Nova Scotia (or equivalent) for a minimum of ten years;

**(ii)** be appointed by the Governor in Council after consultation with the officers of the Nova Scotia Barristers Society and with the two Chief Justices of the Superior Courts in Nova Scotia, for a term of ten years, with eligibility for re-appointment;

**(iii)** be removable for cause by the Governor in Council only after a resolution from the provincial legislature approving such action;

**(iv)** be paid and given employment benefits not less than those of a judge of the County Court of Nova Scotia, and have the status of a departmental "deputy head";

**(b)** the duties and responsibilities of the Director of Public Prosecutions include:

**(i)** the exercise of all of the functions of the Attorney General as agent and deputy of the Attorney General in relation to the administration of criminal justice in the province, subject to paragraph (c) below; and in particular;

**(ii)** regular consultation with the Attorney General concerning all aspects of public prosecution and the administration of the prosecution service;

**(iii)** the direction of the prosecution service of the province, including supervision of those functions presently exercised by the Director (Prosecutions) and the Director (Criminal);

**(iv)** the presentation of an annual report to the Attorney General on the conduct of public prosecutions in the province, which shall describe, among other matters, any personal interventions by the Attorney General pursuant to paragraph (c)(i);

**(c)** the Attorney General continue to exercise the duties and responsibilities traditionally accorded to that office in relation to the administration of criminal justice, subject only to the limitations which follow:

**(i)** where he or she deems it necessary, the Attorney General may intervene in a prosecution contrary to the advice of the Director of Public Prosecutions but only through the use of written instructions which shall be published within 30 days of their issuance in the *Royal Gazette*, or following expiry of the appeal period, whichever is later;

**(ii)** the Attorney General shall, after consultation with the Director of Public Prosecutions, issue guidelines for the exercise of prosecutorial discretion which shall be tabled in the provincial legislature as soon as is practicable after their issuance; and

**(iii)** the Attorney General shall table in the provincial legislature as soon as is practicable the annual report received from the Director of Public Prosecutions pursuant to paragraph (b)(iv).

**36.**
Policy statement on the role of police

We recommend that the following policy statement be included in the Crown Prosecutors' Manual:
**(a)** in the investigation of offences prior to the laying of charges, it is understood that the police officers are to carry out their duties in accordance with the law and general standards, practices and policies established by the Solicitor General, but in consultation with the appropriate Crown prosecutor where necessary; and
**(b)** after the laying of charges, police shall carry out any investigations in accordance with the instructions of the Attorney General or appropriate prosecutor with a view to preparation of the case for presentation in court.

**37.**
Laying of charges

We recommend that:
**(a)** police officers be informed in general instructions from the Solicitor General that they have the ultimate right and duty to determine the form and content of charges to be laid in any particular case according to their best judgment, subject to the Crown's right to withdraw or stay the charges after they have been laid;
**(b)** within each police force there be a clear written policy on resolving disagreements between police and Crown over the laying of charges, and that such policy provides that no charge shall be laid contrary to the advice of the Crown unless and until discussions have been held between the highest levels of police and Crown;
**(c)** within each police force and within the Department of Attorney General there be a clear written directive requiring absolute confidentiality and secrecy of the identity of persons being investigated other than on a need to know basis within the police force and the Department;
**(d)** prosecutors be informed in general instructions from the Attorney General that police officers have the right and the duty to determine the form and content of charges to be laid in any particular case, subject to the Crown's right to withdraw or stay the charges after they have been laid;
**(e)** police officers and Crown prosecutors be informed by their respective departmental superiors that police are encouraged to consult with the appropriate prosecutor concerning the drafting of informations, where such consultation might be thought useful; and
**(f)** the Attorney General institute a system of post-charge screening in appropriate locations in the province (initially as a pilot project) to ensure that no charges which are not strictly necessary in accordance with the evidence and the public interest shall go forward.

**38.**
Factors to be considered when stopping prosecutions

We recommend that:
**(a)** the Attorney General promulgate a clearly stated policy concerning the public interest factors which should, and should not, be considered in deciding whether to undertake or stop a prosecution even in the face of evidence which could sustain a conviction;

**(b)** the factors which might arise for consideration in determining whether the public interest requires a prosecution, include:

**(i)** the triviality of the alleged offence or that it is of a "technical" nature only;

**(ii)** the age, physical health, mental health or special infirmity of an alleged offender or witness;

**(iii)** the staleness of the alleged offence;

**(iv)** the degree of culpability of the alleged offender (particularly in relation to other alleged parties to the offence);

**(v)** the likely effect of a prosecution on public order and morale;

**(vi)** the obsolescence or obscurity of the law;

**(vii)** whether the prosecution would be perceived as counter-productive (such as by making a "martyr" of an alleged offender or by providing publicity to an alleged hate propagandist);

**(viii)** the availability or efficacy of any alternatives to prosecution in the light of the purposes of the criminal sanction;

**(ix)** the prevalence of the alleged offence and any related need for deterrence;

**(x)** whether the consequences of any resulting conviction would be unduly harsh or oppressive;

**(xi)** any entitlement of the State or other person to compensation, reparation or forfeiture if prosecution action is successful;

**(xii)** the attitude of the victim of the alleged offence to a prosecution;

**(xiii)** the likely length and expense of a trial;

**(xiv)** whether the alleged offender is willing to cooperate in the investigation or prosecution of others, or the extent to which he or she has already done so;

**(xv)** the likely outcome in the event of a finding of guilt, having regard to the sentencing options available to the court;

**(xvi)** the necessity for the maintenance of public confidence in legislatures, courts and the administration of justice;

**(c)** the factors which are to be excluded from consideration in determining whether the public interest requires a prosecution, include:

**(i)** the alleged offender's race, religion, sex, national origin, political associations, or beliefs;

**(ii)** the prosecutor's personal feelings concerning the victim or the alleged offender;

**(iii)** any partisan political advantage or disadvantage which might flow from the decision to undertake or stop a prosecution; or

**(iv)** the possible effect on the personal or professional circumstances of those responsible for the prosecution decision;

**(d)** where the prosecutor decides not to undertake or to stop a prosecution by reason of a public interest factor such as those mentioned in (b), a notation of this decision be placed in the file relating to the case in question;

**(e)** the Solicitor General bring the foregoing public interest factors relevant to the prosecution of offences to the attention of police forces operating within the province.

**39.**
Disclosure by Crown

We recommend that the Department of Attorney General of Nova Scotia urge the Federal Government to implement amendments to the *Criminal Code* of Canada as follows:

**1.** A justice shall not proceed with a criminal prosecution unless he is satisfied:
**(a)** that the accused has been given a copy of the information or indictment reciting the charge or charges against him in that prosecution; and
**(b)** that the accused has been advised of his right to disclosure.

**2(1)** Without request, the accused is entitled, before being called upon to elect the mode of trial or to plead to the charge of an indictable offence, whichever comes first, and thereafter:
**(a)** to receive a copy of his criminal record;
**(b)** to receive a copy of any statement made by him to a person in authority and recorded in writing or to inspect such a statement if it has been recorded by electronic means; and to be informed of the nature and content of any verbal statement alleged to have been made by the accused to a person in authority and to be supplied with any memoranda in existence pertaining thereto;
**(c)** to inspect anything that the prosecutor proposes to introduce as an exhibit and, where practicable, receive copies thereof;
**(d)** to receive a copy of any statement made by a person whom the prosecutor proposes to call as a witness or anyone who may be called as a witness, and recorded in writing or, in the absence of a statement, a written summary of the anticipated testimony of the proposed witness, or anyone who may be called as a witness;
**(e)** to receive any other material or information known to the Crown and which tends to mitigate or negate the defendant's guilt as to the offence charged, or which would tend to reduce his punishment therefor, notwithstanding that the Crown does not intend to introduce such material or information as evidence;
**(f)** to inspect the electronic recording of any statement made by a person whom the prosecutor proposes to call as a witness;
**(g)** to receive a copy of the criminal record of any proposed witness; and
**(h)** to receive, where not protected from disclosure by the law, the name and address of any other person who may have information useful to the accused, or other details enabling that person to be identified.

**2(2)** The disclosure contemplated in subsection (1), paragraphs (d), (e) and (h) shall be provided by the Crown and may be limited only

where, upon an *inter partes* application by the prosecutor, supported by evidence showing a likelihood that such disclosure will endanger the life or safety of such person or interfere with the administration of justice, a justice having jurisdiction in the matter deems it just and proper.

**2(3)** Subsection (1) imposes a continuing obligation on the prosecutor to disclose the items as above provided.

**2(4)** A statement referred to in sub-paragraph (b), (d) or (f) of subsection (1) does not include a communication that is governed by the "Invasion of Privacy" provisions of the *Criminal Code*.

**3.** Where a justice having jurisdiction in the matter is satisfied that there has not been compliance with the provisions of subsections 2(1) and 2(2) above, he shall, at the accused's request, adjourn the proceedings until, in his opinion, there has been compliance, and he may make such other order as he considers appropriate in the circumstances.

**40.**
Application to limit disclosure

We recommend that no application to limit disclosure be made without the prior written approval of the Director of Public Prosecutions or a Deputy Attorney General.

**41.**
Interim policy on disclosure

We recommend that until the proposed statutory amendments to the *Criminal Code* are effected, the Attorney General adopt and implement as a matter of policy the duties of disclosure reflected in the preceding recommendation.

**42.**
Police duty to disclose

We recommend that:
**(a)** the Solicitor General inform police forces operating within the province of the Attorney General's directive on disclosure and require compliance with its principles in relations between police and prosecutors;
**(b)** the Solicitor General ensure that continuing police training includes information on the necessity of compliance with disclosure policy.

**43.**
Plea discussions and agreements

We recommend that the existing policy directive on plea discussions and plea agreements be revised to clearly set out the basis for the exercise of discretion by Crown prosecutors in this area, and that such directive in particular set out the governing principles of openness, voluntariness, accuracy, appropriateness and equality.

**44.**
Summaries to trial judges

We recommend the abolition of summaries to trial judges and the abolition of the practice of providing trial judges with copies of preliminary inquiry transcripts.

**45.**
Regional prosecuting officers

We recommend that a system of chief prosecuting officers for each region be adopted in order to create an effective middle level of management in Nova Scotia's prosecution service.

## Police and Policing

**46.**
Police Commission resources and staffing

We recommend that the Police Commission be provided with sufficient resources to enable it to fulfill properly the leadership, training, information and assessment roles that constitute its mandate. Such resources should include funding for:
**(a)** restoring the position of Chairman of the Police Commission to a full time position;
**(b)** the appointment of four part time Commissioners who are broadly representative of community and public interest in policing;
**(c)** the appointment of an experienced Executive Director whose responsibilities will include Research, Information and Statistics; Training and Personnel Development; Advisory Services; and Security.

**47.**
Assessment of municipal police departments

We recommend that the Police Commission conduct regular assessments of the operations of each municipal police department in accordance with the provisions of the *Police Act*.

**48.**
RCMP input to Police Commission

We recommend that the Solicitor General require the RCMP to provide information concerning RCMP operations in the province to the Police Commission on an ongoing basis so the Commission can develop and plan rational policing policy and an adequate police information system in the province.

**49.**
Funding for policing

We recommend that the Police Commission develop and maintain close liaison with officials in the Department of Municipal Affairs and the Executive of the Union of Nova Scotia Municipalities with a view to developing a more rational basis for provincial financial assistance for municipal policing services.

**50.**
Independence of Police Commission

We recommend that the Police Commission not be absorbed into the mainline structure of the Solicitor General's Department to keep it relatively independent of political considerations and to better reflect the municipal-provincial partnership that characterizes the Nova Scotia organization of policing services.

**51.**
Executive Director (Policing)

We recommend the establishment within the Solicitor General's Department of an Executive Director (Policing) to reflect its increasing role in policing in the province.

**52.**
Liaison with boards of police commissioners

We recommend that a regular annual meeting be held by the Police Commission with the chairs of all Nova Scotia boards of police commissioners. The purpose would be to provide a forum for information exchange, program development and possible collaboration among municipal police departments in various matters, from equipment to crime prevention.

**53.**
Independence of Police Review Board

We recommend that the Chairman of the Nova Scotia Police Commission not act as the Registrar of the Police Review Board, and that the Nova Scotia Police Commission not provide investigative services to the Police Review Board.

**54.**
Independence of police forces

We recommend that the *Police Act* be amended to make it clear that it is unlawful for anyone other than a police officer of the same force to issue any order, direction or instruction to any member of a police force relative to his/her duties as a member of the force, except when communicating a decision of the force's lawful governing authority, and that a governing authority shall only issue such order, direction or instruction to the Chief or someone who is acting in his or her stead.

**55.**
Minority recruitment

We recommend that the recruitment of visible minority group members be actively encouraged by both police and governing authorities. Both the RCMP and municipal police departments in the province should establish specific recruitment targets which reflect the distribution of the visible minority groups in the population.

**56.**
Outreach recruitment

We recommend that particular attention be given to using outreach recruitment methods (for example, having visible minority officers involved in recruitment; building up contact with minority communities to facilitate recruitment). The guidelines prepared by the Greater Toronto Region Working Group on Policing in Multicultural, Multiracial Urban Groups on the recruitment and selection of visible minority police officers should be circulated to all relevant police organizations in the province.

**57.**
Minorities in management positions

We recommend that action be taken to get members of visible minorities into police management positions.

**58.**
Minority/police relations

We recommend that the Nova Scotia Police Commission take a strong leadership role in police/visible minority relations by providing useful materials to departments (comparable in quality to those now made available to its officers by the RCMP), arranging imaginative in-service training in conjunction with the Atlantic Police Academy or similar bodies, and assisting departments in the setting up of race relations liaison officers or committees.

**59.**
Access of minorities to police

We recommend that, together with the Nova Scotia Police Commission, municipal police departments and local boards of police commissioners develop imaginative outreach programs and liaison roles in order to provide visible minorities with greater access to and more positive interaction with the police.

**60.**
Discrimination in police departments

We recommend that municipal police departments adopt as an objective the eradication in police departments of racial slurs and stereotyping, and in pursuit of this objective promulgate official policies and guidelines on stereotyping similar to those currently employed by the RCMP (RCMP Administration Manual 111.9) or the Metropolitan Toronto Police Force (standing order number 24).

**61.**
Training

We recommend that special attention be given to more intensive training for cadets whose first assignment will be in areas of high visible minority concentration. In addition, detachments and municipal police departments located in areas of high visible minority concentration should allocate proportionally more of their resources to multicultural and race relations training. The Police Commission should monitor detachment and municipal police department performance in this area.

**62.**
Sensitivity to minority concerns

We recommend that education and sensitivity training with respect to visible minorities be more pronounced in the cadet training curriculum and should be a component of regular in-service training.

**63.**
Atlantic Police Academy programs

We recommend that the Atlantic Police Academy be encouraged to continue to develop in-service programs and imaginative experimental initiatives for police/visible minority interaction.

**64.**
Guidelines on other than full time personnel

We recommend that guidelines be developed by the Police Commission with respect to the use by municipal police departments of part time, volunteer and auxiliary personnel.

**65.**
Promotion guidelines

We recommend that routine promotion guidelines be established in all municipal police departments. In all but the largest municipal police departments the involvement of the Police Commission and/or outside consultants should be required.

**66.**
Selection of chief of police

We recommend that in all but the largest municipal police departments the involvement of the Police Commission and/or outside consultants be required in the selection of the chief of police.

**67.**
Supervisory and management training

We recommend that more training be provided for those promoted to supervisory and management positions in the municipal police departments. Training in courses on supervision and executive development should accompany such promotion.

**68.**
Monitoring of training

We recommend that the Solicitor General's Task Force on Municipal Police Training, as well as the data collected as part of the Police Study for this Report, be used to establish an ongoing system for monitoring levels of training in the province. The system should be maintained by the Police Commission or equivalent body and should incorporate clear definitions of the types of training appropriate for the needs of particular members, departments and detachments.

**69.**
Assessment of police officers

We recommend that periodic assessment of municipal police department officers be carried out as in Nova Scotia's recently announced "force continuum program" which deals with the use of firearms and mace. Common standards should be developed for certification in these areas and consideration should be given to the inclusion of physical fitness and basic response/preliminary investigation imperatives.

**70.**
Investigative skills

We recommend that all constables be required to have basic investigative skills such as would be required to secure the crime scene and carry out proper preliminary recording and investigation.

**71.**
Guidelines for investigations

We recommend that municipal police departments cooperate with the Police Commission to produce a uniform set of guidelines for investigative work.

**72.**
Evaluation of investigative capabilities in police departments

We recommend that the Police Commission undertake a systematic evaluation of the investigative capacities available in all municipal police departments in the province. This evaluation should be coordinated with periodic reviews of the municipal police departments.

**73.**
Directive on investigation of murder/attempted murder

We recommend that the current standing directive on municipal police department responsibilities for the investigation of murder and attempted murder be regarded as a flexible directive which may change to reflect alterations in municipal police department investigative capacities. This may involve broadening the scope of exemptions, or it may lead to the inclusion of other serious crimes in the list of offences which some municipal police departments may not be able to handle.

**74.**
Interviewing juveniles and the mentally unstable

We recommend that in cases where suspects and/or witnesses are juveniles or mentally unstable, investigating officers make special efforts to ensure they are treated fairly. Supportive persons from the witness/suspect viewpoint should be present during interviews.

**75.**
Recording police interviews

We recommend that audio-visual recording of police interviews of chief suspects and witnesses in serious crimes such as murder, and of juveniles and other interviewees who may be easily influenced, be encouraged.

**76.**
Internal review of investigations

We recommend that it be standard practice in all police departments for superiors to review, with investigators, the progress of investigations of all serious offenses.

**77.**
Delivery of policing services

We recommend that a joint task force be established by the Solicitor General and the Minister of Municipal Affairs, with representation from the other relevant bodies, to examine the organization and delivery of policing services within the province, and in particular, to consider and review the desirability and feasibility of some regionalization of existing municipal policing services in the province, and to make recommendations to the Government on these matters. Such a review should also examine other less comprehensive collaborative arrangements which might beneficially be established or further developed between existing municipal police forces and the RCMP to improve the quality and efficacy of the delivery of policing services in the province.

**78.**
Minimum standards for policing

We recommend that all municipal police departments be able to deliver police services according to a set of minimum standards for policing in Nova Scotia. This set of standards should be developed by the Police Commission with appropriate input from both provincial (Solicitor General) and municipal (local police commissions) governing authorities. Recognizing that the primary responsibility for delivery of police services is with the municipalities and that it may be beyond the financial capability of some to upgrade their municipal police department according to these minimum standards, the Province must ensure that the municipal police departments have the resources to meet the prescribed standards.

**79.**
Departmental plans

We recommend that municipal police departments establish departmental plans which include a clear definition of departmental goals and priorities, and appraisal systems for evaluating job performances.

**80.**
Management systems

We recommend that priority be given to improving police management systems among the municipal police departments, focussing on greater communication, feedback and accountability among departmental members.

**81.**
Code of ethics

We recommend that municipal police departments be encouraged to develop a code of ethics as positive guidelines for behavior. For purposes of continuity and consistency and for minimum standardization, such codes should be developed in consultation with the Atlantic Police Academy and the Police Commission.

**82.**
Reinvestigations

We recommend that guidelines be developed by the Solicitor General and Attorney General Departments detailing procedures to be followed where it is necessary for there to be a reinvestigation of the work of a police force. Any such reinvestigation of the work of a municipal police department should be conducted by the RCMP, with out-of-province assistance if required. All reinvestigations should be thoroughly reviewed by the Department of Attorney General.